Don Johnson

7/14/1

From: Ranen S. Schechner [RSchechner@AndersonKreiger.com]

Sent: Monday, June 30, 2003 1:29 PM

To: Stephen Anderson

Cc: Don Johnson; Doug Halley Subject: Act\High: New Draft of ACO

Dear Steve:

I have reviewed the most recent draft of the Administrative Consent Order in this matter, which the Town received on June 27, 2003. It contains the changes the parties agreed to at the enforcement conference. Essentially, paragraph # 9 of the most recent ACO acknowledges that the Town has met all the requirements under the ACO except for the installation of the tight tank (180 days) and the peformance of the SEP (120 days to avoid \$2800 penalty). As compared to the previous ACO, the only other change is in the wording of paragraph # 22. That paragraph has one sentence reworded, but it doesn't change its meaning.

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MITT ROMNEY Governor

KERRY HEALEY Lieutenant Governor

COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS DEPARTMENT OF ENVIRONMENTAL PROTECTION

Central Regional Office, 627 Main Street, Worcester, MA 01608

STEVE ANDERSON DOUG HALLEY



Town of Acton 472 Main Street Acton, MA 01720

Attention: John Murray,

Assistant Town Manager

SELECTMENS BUSINESS Re: BWP - Acton

CONSENT ORDER AND NOTICE OF NONCOMPLIANCE with M.G.L. Chapters 21C, 111 and 21, and 310 CMR 30.000, 310 CMR 7.00, 310 CMR 19.00

and 314 CMR 5.00

Dear Mr. Murray:

ACO-CE-03-9002-247A FMF ID # 131288

The Department has reviewed the Town of Acton's response to the draft Consent Order (ACO-CE-02-9006-247A), and has made changes to said draft to reflect the Town's comments and also the requirements of the Department's Industrial Wastewater Regulations pertaining to Holding Tanks (314 CMR 18.00) which came into effect on November 15, 2002.

The Department will suspend \$2800.00 of the penalty provided the Town of Acton performs a project as described in Attachment A within one hundred twenty (120) calendar days of the effective date of this Consent Order. Please review and sign both of the enclosed documents and submit to the Department within seven (7) days of receipt of this draft Consent Order. An executed Consent Order will then be returned to you.

Should you have any questions concerning the Consent Order, please contact Cecilia Catalan at (508) 792-7692 Ext. 2755 as soon as possible.

ML'A/CMC/jc enclosure

Respectfully,

Maria Klinnungiato Maria L'Annunziata

Section Chief

Bureau of Waste Prevention

COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS DEPARTMENT OF ENVIRONMENTAL PROTECTION

)	
In the matter of:)	
)	
Town of Acton)	ACO-CE-03-9002-247A
)	FMF # 131288

ADMINISTRATIVE CONSENT ORDER AND NOTICE OF NONCOMPLIANCE

I. THE PARTIES

- 1. The Department of Environmental Protection ("the Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. The Department maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 627 Main Street, Worcester, Massachusetts 01608.
- 2. The Town of Acton (the "Town") is a Massachusetts municipality with its principal office at 472 Main Street in Acton, Massachusetts. The Town, through its Highway Department operates a maintenance garage, a storage garage, a fuel dispensing facility, and a transfer station located at 14 Forest Road, Acton, Massachusetts (the Site). All references in this Consent Order to either garage, the fuel dispensing facility, and/or the transfer station shall refer to those facilities as the Site.

II. STATEMENT OF FACTS AND LAW

3. The Department is responsible for the implementation and enforcement of: M.G.L. c. 111 §§ 142A-142I, and the Air Pollution Control Regulations at 310 CMR 7.00; M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000; M.G.L. c. 21 §§ 26-53, and the Ground Water Discharge Permit Regulations at 314 CMR 5.00; M.G.L. c. 111 § 150A, M.G.L. c. 21A § 2 and § 8, St. 1987 c. 584, and the Solid Waste Management Regulations at 310 CMR 19.000. The Department has authority under M.G.L. c. 21A § 16, and the Administrative Penalty Regulations at 310 CMR 5.00, to assess civil administrative penalties to persons in noncompliance with its Regulations.

- 4. The Town is currently a Waste Oil Large Quantity Generator pursuant to 310 CMR 30.000 et seq. and a non-notifier of Industrial Wastewater pursuant to 314 CMR 5.00 et seq.
- 5. On December 11, 2001 while performing an inspection at the garage and the transfer station, the Department observed the following activities considered to be violations at the Site:

HAZARDOUS WASTE MANAGEMENT

- A. The Town did not mark the Waste Oil accumulation area at the transfer station and did not mark the underground Waste Oil tank or the Regulated Recyclable Material accumulation area at the garage, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(k).
- B. The Town's Regulated Recyclable Material aboveground accumulation tank at the garage and the aboveground Waste Oil accumulation tank at the transfer station do not have a secondary containment system, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(g).
- C. The Town did not provide an impervious surface underlying the Waste Oil accumulation tank at the transfer station, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(f).
- D. The Town's Regulated Recyclable Material accumulation tank and underground Waste Oil accumulation tank at the garage, and the aboveground Waste Oil accumulation tank at the transfer station were not properly labelled, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a), and 310 CMR 30.340(1)(b).
- E. The Town did not properly label its Waste Oil satellite accumulation containers at the garage, in violation of 310 CMR 30.253 (5)(a), 310 CMR 30.340(4)(e) and 310 CMR 30.682.
- F. The Town did not post a sign at its underground Waste Oil accumulation tank area and Regulated Recyclable Material accumulation area at the garage, in violation of 310 CMR 30.393(4)(h), 310 CMR 30.205(19) and 310 CMR 30.253(5)(a).
- G. The Town is not testing each batch of Waste Oil that it receives from the transfer station before burning it in the space heater in the garage, in violation of 310 CMR 30.393(5)(b).
- H. The Town is recycling a Class A Regulated Recyclable material without a Class A Recycling Permit, in violation of 310 CMR 30.221(1).
- I. The Town did not meet the requirements governing emergency procedures, prevention and response, in violation of 310 CMR 30.393(4)(c) and 310 CMR 30.351(9).

INDUSTRIAL WASTEWATER

J. The Town discharges industrial wastewater from the garage to a drywell at the Site without a groundwater discharge permit issued by the Department, in violation of 314 CMR 5.00, and M.G.L. c. 21, § 43.

AIR QUALITY CONTROL

K. The Town failed to notify the Department upon installation and operation of the fuel dispensing facility, in violation of 310 CMR 7.24(6)(c).

SOLID WASTE

- L. The Town as operator of the transfer station is not meeting record keeping requirements by not recording results of ongoing monitoring procedures, in violation of 310 CMR 19.043(5)(g).
- 6. On February 15, 2002, the Department issued a Notice of Enforcement Conference to the Town describing the above violations and setting a date to meet with the Town to discuss the violations, and requirements for coming into compliance.
- 7. On March 12, 2002, representatives of the Town met with representatives of the Department and presented its responses to the noncompliance matters identified in the Notice of Enforcement Conference.
- 8. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the allegations set forth above.
- 9. The Department acknowledges that the Town has met the requirements of paragraphs 11A through I and paragraphs 11K and L below since the inspection in a cooperative manner.

III. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and the Town hereby consents to, the following Order:

10. The Department's authority to issue this Consent Order is conferred by M.G.L. c. 111 §§ 142A-142I, and the Air Pollution Control Regulations at 310 CMR 7.00; M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000; M.G.L. c. 21 §§ 26-53, and the Ground Water Discharge Permit Regulations at 314 CMR 5.00; M.G.L. c. 111 § 150A, M.G.L. c. 21A § 2 and § 8, St. 1987 c. 584, and the Solid Waste Management Regulations at 310 CMR 19.000, and M.G.L. c. 21A, §16, and the Administrative Penalty Regulations at 310 CMR 5.00.

11. The Town shall take the following actions:

HAZARDOUS WASTE MANAGEMENT

A. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(k) with respect to clearly marking all areas where wastes are accumulated (e.g., by a clearly visible line or piece of tape on the floor, or by a gate or fence, or by a sign at the boundary of a clearly distinguishable area).

B. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(g) with respect to providing a secondary containment system for the Regulated Recyclable Material aboveground accumulation tank at the garage and the Waste Oil accumulation tank at the transfer station. The containment system must be designed and operated so that it has the capacity to contain either 10% of the total possible contained volume of the containers and above-ground tanks, or 110% of the volume of the largest container or above-ground tank, whichever is greater.

C. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(f) with respect to underlying the Waste Oil accumulation tank at the transfer station with a surface which is sufficiently impervious to contain leaks and spills.

D. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(b) with respect to labelling of the Waste Oil accumulation tank at the transfer station with the words "Hazardous Waste"; the Hazardous Waste identified in words "Waste Oil"; the type of hazard associated with the waste indicated in words "Toxic"; the date upon which each period of accumulation begins. Also, comply with 310 CMR 30.205(19) and 310 CMR 30.253(5)(a) with respect to labelling of the aboveground waste oil accumulation tank and the underground waste oil accumulation tank at the garage, both of which contain Regulated Recyclable Material (e.g., waste oil that has been tested and was found to be acceptable for burning in the space heater), with the words "Regulated Recyclable Material"; the regulated recyclable material identified in words "Used Oil Fuel"; and the type of hazard associated with the waste indicated in words "Toxic". Marks and labels shall be placed on the sides of each tank in such a manner that they are clearly visible for inspection.

E. Effective immediately, comply with 310 CMR 30.253(5)(a), 310 CMR 30.340(4)(e), and 310 CMR 30.682 with respect to clearly labelling and marking the side of each Waste Oil satellite accumulation container, throughout the period of storage, in a manner which identifies, in words, the Hazardous Waste being stored in the container, e.g., "Waste Oil", and the hazard associated with the waste, e.g., "Toxic". Each container shall also be marked with the words "Hazardous Waste". As soon as the Town obtains its Class A Recycling Permit to burn waste oil in its space heater, it shall change the label of the satellite container for any uncontaminated waste oil (e.g., waste oil generated only in the garage and found to be acceptable for burning) by substituting the words "Hazardous Waste" with "Regulated Recyclable Material"; and the words "Waste Oil" with "Used Oil Fuel".

- F. Effective immediately, comply with 310 CMR 30.393(4)(h), 310 CMR 30.205(19) and 310 CMR 30.253(5)(a) with respect to posting a sign with the words "Waste Oil" in capital letters, at least one inch high, at all areas where waste oil is accumulated.
- G. Effective immediately, comply with 310 CMR 30.393(5)(b) with respect to testing each batch of Waste Oil received from the transfer station before burning it in the space heater in the garage.
- H. Effective immediately, comply with 310 CMR 30.221(1) with respect to submitting a Class A Recycling Permit to the Department.
- I. Effective immediately, comply with 310 CMR 30.393(4)(c) and 310 CMR 30.351(9) governing emergency procedures, prevention and response at the Site. An up-to-date written list containing the following information shall be prominently posted next to every telephone at the site of accumulation:
 - (1) The name(s) and telephone number(s) of the emergency coordinator(s).
 - (2) The location(s) of the fire extinguisher(s) and spill control materials(s), and if present, the fire alarms.
 - (3) The telephone number of the fire department, or if there is a direct alarm system, instructions on how to activate it, or both.
 - (4) Evacuation routes, where applicable.

All employees at the Site shall be properly trained so that they know how to perform their duties so that Hazardous Waste handling practices and emergency procedures are performed properly and in compliance with all applicable requirements of 310 CMR 30.000.

The Town shall make every reasonable attempt to make the following arrangements, as appropriate for the type of Hazardous Waste handled at the site of generation or accumulation and the potential need for the services of the persons or organizations referred to below:

(1) Arrangements to familiarize police departments, fire departments, local boards of health, and emergency response teams with the layout of the site, properties of Hazardous Waste handled at the Site, hazards associated with such wastes, places where personnel at the Site would normally be working, entrances to and roads inside the Site, and possible evacuation routes.

- (2) If more than one police department and/or fire department might respond to an emergency, agreements designating the specific police department and/or specific fire department, which shall have primary emergency authority, and agreements with any other police department(s) and/or fire department(s) to provide support to whoever has primary emergency authority.
- (3) Agreements with State emergency response teams, emergency response contractors, local boards of health, and equipment suppliers.
- (4) Arrangements to familiarize local hospitals with the properties of Hazardous Waste handled at the site and the types of injuries or illnesses, which could result from fires, explosions, or other releases at the site.

INDUSTRIAL WASTEWATER

J. Within one hundred eighty (180) days of the effective date of this Consent Order, the Town shall construct, install and operate a wastewater holding tank pursuant to the standards provided at the Department's regulations 314 CMR 18.00. Upon commencement of operation of that holding tank for the temporary collection and ultimate off-site disposal of its non-sanitary wastewater, the Town shall submit applicable holding tank construction and operation compliance certification to the Department pursuant to the requirements of 314 CMR 18.00.

AIR QUALITY CONTROL

K. Within 21 days of the effective date of this Consent Order, submit in writing a description of all steps taken to ensure compliance with 310 CMR 7.24(6)(c) at the Site.

SOLID WASTE

L. Effective immediately, comply with 310 CMR 19.043(5)(g) by recording the results of ongoing monitoring procedures at the transfer station.

All submittals required by this Paragraph 11 shall be made in writing to:

Department of Environmental Protection Maria L'Annunziata, Section Chief Central Regional Office 627 Main Street Worcester, Massachusetts 01608

12. Actions taken pursuant to this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving the Town or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

- 13. The Department hereby determines, and the Town hereby agrees, that the deadlines set forth above constitute reasonable periods of time for the Town to take the actions described above.
- 14. The Town hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.
- 15. This Consent Order represents the full and final agreement among the parties concerning the matters described herein, and supersedes all prior oral and written agreements and discussions.
- 16. This Consent Order may be modified only by written agreement of the parties hereto. The provisions of this Consent Order are severable, and if any provision of this Consent Order, or the application thereof, is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application; provided, however, that the Department shall have the discretion to void this Consent Order in the event of any such invalidity.
- 17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional Order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding. Notwithstanding the foregoing, the Department agrees that it will not seek to assess the Town civil administrative penalties beyond those described in this Consent Order for the violations identified in Part II. above, provided that the Town satisfies the terms and conditions of this Consent Order and any approval issued hereunder.
- 18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of the Department with respect to any subject matter not covered by this Consent Order.
- 19. Nothing in this Consent Order shall be construed:
- A. to waive any of the Town's rights in any other enforcement action, including any statute of limitations for violations identified pursuant to this Consent Order, unless such right is expressly waived or limited pursuant to this Agreement; or
- B. to waive any of the Town's rights under any other written agreement, order or permit with or from the Department, unless such right is expressly waived or limited therein or pursuant to this Consent Order.

- 20. This Consent Order shall be binding upon the Town and upon its officers, employees, agents, contractors, successors and assigns. Violation of this Consent Order by any of the foregoing persons or entities shall constitute violation of this Consent Order by the Town. The Town shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs. The Town shall provide a copy of this Consent Order to each agent, contractor or employee who is engaged to implement the terms of this Consent Order.
- 21. For purposes of M.G.L. c. 21A § 16 and 310 CMR 5.00, this Consent Order shall serve as a Notice of Noncompliance for the Town's noncompliance with the requirements cited in Part II. above.
- 22. For the violations alleged in Section II. above, the Town was assessed a Civil Administrative Penalty in the amount of Fourteen Thousand Dollars (\$14,000.00). Through the application of the Department's Municipal Policy (Policy On Compliance Incentives For Municipalities), Policy # ENF-97.003, the Department will waive Eleven Thousand Two Hundred Dollars (\$11,200.00) of the civil administrative penalty. The Department will suspend the remaining Two Thousand Eight Hundred Dollars (\$2,800.00) provided that the Town performs the project as described in Attachment A, which is specifically incorporated herein by reference, within one hundred twenty (120) calendar days from the effective date of this Consent Order. The actual cost of the project shall not include personnel costs of the Town employees or officers. The Town will be entitled to credit its actual cost against the amount of the suspended penalty only after submitting copies of vendors' invoices and proof of payment to the Department.
- 23. In addition to the penalty in Paragraph 22. above, the Town shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if the Town violates this Consent Order:

For each day, or portion thereof, of each violation, the Town shall pay stipulated civil administrative penalties to the Commonwealth as follows:

Period of Violation	Penalty per day
1 st through 15 th days	\$ 250 per day
16 th through 30 th days	\$ 500 per day
31 st day and thereafter	\$ 1,000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day the Town corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified the Town of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within ten (10) days of the date the Department sends the Town a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way the Town's obligation to complete performance as required by this Consent Order.

The Department reserves its right to elect to pursue other remedies and penalties, including administrative, civil and criminal penalties, in accordance with applicable laws if the Town violates any provision of this Consent Order. In the event the Department elects to pursue such other remedies or penalties, the Town shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order.

24. The Town shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order payable to the Commonwealth of Massachusetts. The Town shall clearly print on the face of its payment the Town's full name, the file number appearing on the first page of this Consent Order, and the Town's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts Department of Environmental Protection Commonwealth Master Lockbox P.O. Box 3584 Boston, Massachusetts 02241-3584

The Town shall mail a copy of the payment to:

Maria L'Annunziata, Section Chief Department of Environmental Protection Central Regional Office 627 Main Street Worcester, Massachusetts 01608

In the event the Town fails to pay in full, any civil administrative penalty on or before the date due under this Consent Order, and in the manner and form required by, and the date due by, this Consent Order, the Town shall pay to the Commonwealth three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, §6C. The Town shall not be deemed to have returned to compliance until the Town pays all penalties due under this Consent Order and takes all actions required by this Consent Order.

25. The Town agrees to provide the Department, and the Department's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provisions of this Consent Order, the Department retains all of its access authorities and rights under applicable state and federal law.

- 26. The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the parties that they represent.
- 27. This Consent Order shall become effective on the date that it is executed on behalf of the Department.

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Ву:	Date:
Don P. Johnson	Date.
Town Manager	
[Address]	
[Telephone]	
Federal Employer Identification No	
DEPARTMENT OF ENVIRONMENTAL P	ROTECTION
By:	Date:
Martin Suuberg, Regional Director	
Central Regional Office	
627 Main Street	
Worcester, Massachusetts 01608	
Telephone: (508) 792-7650	

MS/ML'A/CMC/jc

ATTACHMENT A

The Town has developed and will publish and disseminate the "Resident's Guide to Hazardous Waste Disposal" (The Resident's Guide"). The Town will establish a priority for the mailing to residents closest to environmentally sensitive areas and business centers in the Town. The Resident's Guide will also be distributed at the Town's Hazardous Waste Day to approximately 500 residents per year. It will be posted on the Town's website and advertised through the local media outlets.

COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS DEPARTMENT OF ENVIRONMENTAL PROTECTION

)	
In the matter of:)	
)	
Town of Acton)	ACO-CE-03-9002-247A
)	FMF # 131288

ADMINISTRATIVE CONSENT ORDER AND NOTICE OF NONCOMPLIANCE

I. THE PARTIES

- 1. The Department of Environmental Protection ("the Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. The Department maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 627 Main Street, Worcester, Massachusetts 01608.
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II. STATEMENT OF FACTS AND LAW

3. The Department is responsible for the implementation and enforcement of: M.G.L. c. 111 §§ 142A-142I, and the Air Pollution Control Regulations at 310 CMR 7.00; M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000; M.G.L. c. 21 §§ 26-53, and the Ground Water Discharge Permit Regulations at 314 CMR 5.00; M.G.L. c. 111 § 150A, M.G.L. c. 21A § 2 and § 8, St. 1987 c. 584, and the Solid Waste Management Regulations at 310 CMR 19.000. The Department has authority under M.G.L. c. 21A § 16, and the Administrative Penalty Regulations at 310 CMR 5.00, to assess civil administrative penalties to persons in noncompliance with its Regulations.

- 4. The Town is currently a Waste Oil Large Quantity Generator pursuant to 310 CMR 30.000 et seq. and a non-notifier of Industrial Wastewater pursuant to 314 CMR 5.00 et seq.
- 5. On December 11, 2001 while performing an inspection at the garage and the transfer station, the Department observed the following activities considered to be violations at the Site:

HAZARDOUS WASTE MANAGEMENT

- A. The Town did not mark the Waste Oil accumulation area at the transfer station and did not mark the underground Waste Oil tank or the Regulated Recyclable Material accumulation area at the garage, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(k).
- B. The Town's Regulated Recyclable Material aboveground accumulation tank at the garage and the aboveground Waste Oil accumulation tank at the transfer station do not have a secondary containment system, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(g).
- C. The Town did not provide an impervious surface underlying the Waste Oil accumulation tank at the transfer station, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(f).
- D. The Town's Regulated Recyclable Material accumulation tank and underground Waste Oil accumulation tank at the garage, and the aboveground Waste Oil accumulation tank at the transfer station were not properly labelled, in violation of 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a), and 310 CMR 30.340(1)(b).
- E. The Town did not properly label its Waste Oil satellite accumulation containers at the garage, in violation of 310 CMR 30.253 (5)(a), 310 CMR 30.340(4)(e) and 310 CMR 30.682.
- F. The Town did not post a sign at its underground Waste Oil accumulation tank area and Regulated Recyclable Material accumulation area at the garage, in violation of 310 CMR 30.393(4)(h), 310 CMR 30.205(19) and 310 CMR 30.253(5)(a).
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- I. The Town did not meet the requirements governing emergency procedures, prevention and response, in violation of 310 CMR 30.393(4)(c) and 310 CMR 30.351(9).

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J. The Town discharges industrial wastewater from the garage to a drywell at the Site without a groundwater discharge permit issued by the Department, in violation of 314 CMR 5.00, and M.G.L. c. 21, § 43.

AIR QUALITY CONTROL

K. The Town failed to notify the Department upon installation and operation of the fuel dispensing facility, in violation of 310 CMR 7.24(6)(c).

SOLID WASTE

- L. The Town as operator of the transfer station is not meeting record keeping requirements by not recording results of ongoing monitoring procedures, in violation of 310 CMR 19.043(5)(g).
- 6. On February 15, 2002, the Department issued a Notice of Enforcement Conference to the Town describing the above violations and setting a date to meet with the Town to discuss the violations, and requirements for coming into compliance.
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- 8. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the allegations set forth above.
- 9. The Department acknowledges that the Town has met the requirements of paragraphs 11A through I and paragraphs 11K and L below since the inspection in a cooperative manner.

III. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and the Town hereby consents to, the following Order:

10. The Department's authority to issue this Consent Order is conferred by M.G.L. c. 111 §§ 142A-142I, and the Air Pollution Control Regulations at 310 CMR 7.00; M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000; M.G.L. c. 21 §§ 26-53, and the Ground Water Discharge Permit Regulations at 314 CMR 5.00; M.G.L. c. 111 § 150A, M.G.L. c. 21A § 2 and § 8, St. 1987 c. 584, and the Solid Waste Management Regulations at 310 CMR 19.000, and M.G.L. c. 21A, §16, and the Administrative Penalty Regulations at 310 CMR 5.00.

11. The Town shall take the following actions:

HAZARDOUS WASTE MANAGEMENT

A. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(k) with respect to clearly marking all areas where wastes are accumulated (e.g., by a clearly visible line or piece of tape on the floor, or by a gate or fence, or by a sign at the boundary of a clearly distinguishable area).

B. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.205(19), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(g) with respect to providing a secondary containment system for the Regulated Recyclable Material aboveground accumulation tank at the garage and the Waste Oil accumulation tank at the transfer station. The containment system must be designed and operated so that it has the capacity to contain either 10% of the total possible contained volume of the containers and above-ground tanks, or 110% of the volume of the largest container or above-ground tank, whichever is greater.

C. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(f) with respect to underlying the Waste Oil accumulation tank at the transfer station with a surface which is sufficiently impervious to contain leaks and spills.

D. Effective immediately, comply with 310 CMR 30.393(4)(b), 310 CMR 30.253(5)(a) and 310 CMR 30.340(1)(b) with respect to labelling of the Waste Oil accumulation tank at the transfer station with the words "Hazardous Waste"; the Hazardous Waste identified in words "Waste Oil"; the type of hazard associated with the waste indicated in words "Toxic"; the date upon which each period of accumulation begins. Also, comply with 310 CMR 30.205(19) and 310 CMR 30.253(5)(a) with respect to labelling of the aboveground waste oil accumulation tank and the underground waste oil accumulation tank at the garage, both of which contain Regulated Recyclable Material (e.g., waste oil that has been tested and was found to be acceptable for burning in the space heater), with the words "Regulated Recyclable Material"; the regulated recyclable material identified in words "Used Oil Fuel"; and the type of hazard associated with the waste indicated in words "Toxic". Marks and labels shall be placed on the sides of each tank in such a manner that they are clearly visible for inspection.

E. Effective immediately, comply with 310 CMR 30.253(5)(a), 310 CMR 30.340(4)(e), and 310 CMR 30.682 with respect to clearly labelling and marking the side of each Waste Oil satellite accumulation container, throughout the period of storage, in a manner which identifies, in words, the Hazardous Waste being stored in the container, e.g., "Waste Oil", and the hazard associated with the waste, e.g., "Toxic". Each container shall also be marked with the words "Hazardous Waste". As soon as the Town obtains its Class A Recycling Permit to burn waste oil in its space heater, it shall change the label of the satellite container for any uncontaminated waste oil (e.g., waste oil generated only in the garage and found to be acceptable for burning) by substituting the words "Hazardous Waste" with "Regulated Recyclable Material"; and the words "Waste Oil" with "Used Oil Fuel".

- F. Effective immediately, comply with 310 CMR 30.393(4)(h), 310 CMR 30.205(19) and 310 CMR 30.253(5)(a) with respect to posting a sign with the words "Waste Oil" in capital letters, at least one inch high, at all areas where waste oil is accumulated.
- G. Effective immediately, comply with 310 CMR 30.393(5)(b) with respect to testing each batch of Waste Oil received from the transfer station before burning it in the space heater in the garage.
- H. Effective immediately, comply with 310 CMR 30.221(1) with respect to submitting a Class A Recycling Permit to the Department.
- I. Effective immediately, comply with 310 CMR 30.393(4)(c) and 310 CMR 30.351(9) governing emergency procedures, prevention and response at the Site. An up-to-date written list containing the following information shall be prominently posted next to every telephone at the site of accumulation:
 - (1) The name(s) and telephone number(s) of the emergency coordinator(s).
 - (2) The location(s) of the fire extinguisher(s) and spill control materials(s), and if present, the fire alarms.
 - (3) The telephone number of the fire department, or if there is a direct alarm system, instructions on how to activate it, or both.
 - (4) Evacuation routes, where applicable.

All employees at the Site shall be properly trained so that they know how to perform their duties so that Hazardous Waste handling practices and emergency procedures are performed properly and in compliance with all applicable requirements of 310 CMR 30.000.

The Town shall make every reasonable attempt to make the following arrangements, as appropriate for the type of Hazardous Waste handled at the site of generation or accumulation and the potential need for the services of the persons or organizations referred to below:

(1) Arrangements to familiarize police departments, fire departments, local boards of health, and emergency response teams with the layout of the site, properties of Hazardous Waste handled at the Site, hazards associated with such wastes, places where personnel at the Site would normally be working, entrances to and roads inside the Site, and possible evacuation routes.

- (2) If more than one police department and/or fire department might respond to an emergency, agreements designating the specific police department and/or specific fire department, which shall have primary emergency authority, and agreements with any other police department(s) and/or fire department(s) to provide support to whoever has primary emergency authority.
- (3) Agreements with State emergency response teams, emergency response contractors, local boards of health, and equipment suppliers.
- (4) Arrangements to familiarize local hospitals with the properties of Hazardous Waste handled at the site and the types of injuries or illnesses, which could result from fires, explosions, or other releases at the site.

INDUSTRIAL WASTEWATER

J. Within one hundred eighty (180) days of the effective date of this Consent Order, the Town shall construct, install and operate a wastewater holding tank pursuant to the standards provided at the Department's regulations 314 CMR 18.00. Upon commencement of operation of that holding tank for the temporary collection and ultimate off-site disposal of its non-sanitary wastewater, the Town shall submit applicable holding tank construction and operation compliance certification to the Department pursuant to the requirements of 314 CMR 18.00.

AIR QUALITY CONTROL

K. Within 21 days of the effective date of this Consent Order, submit in writing a description of all steps taken to ensure compliance with 310 CMR 7.24(6)(c) at the Site.

SOLID WASTE

L. Effective immediately, comply with 310 CMR 19.043(5)(g) by recording the results of ongoing monitoring procedures at the transfer station.

All submittals required by this Paragraph 11 shall be made in writing to:

Department of Environmental Protection Maria L'Annunziata, Section Chief Central Regional Office 627 Main Street Worcester, Massachusetts 01608

12. Actions taken pursuant to this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving the Town or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

- 13. The Department hereby determines, and the Town hereby agrees, that the deadlines set forth above constitute reasonable periods of time for the Town to take the actions described above.
- 14. The Town hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.
- 15. This Consent Order represents the full and final agreement among the parties concerning the matters described herein, and supersedes all prior oral and written agreements and discussions.
- 16. This Consent Order may be modified only by written agreement of the parties hereto. The provisions of this Consent Order are severable, and if any provision of this Consent Order, or the application thereof, is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application; provided, however, that the Department shall have the discretion to void this Consent Order in the event of any such invalidity.
- 17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional Order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding. Notwithstanding the foregoing, the Department agrees that it will not seek to assess the Town civil administrative penalties beyond those described in this Consent Order for the violations identified in Part II. above, provided that the Town satisfies the terms and conditions of this Consent Order and any approval issued hereunder.
- 18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of the Department with respect to any subject matter not covered by this Consent Order.
- 19. Nothing in this Consent Order shall be construed:
- A. to waive any of the Town's rights in any other enforcement action, including any statute of limitations for violations identified pursuant to this Consent Order, unless such right is expressly waived or limited pursuant to this Agreement; or
- B. to waive any of the Town's rights under any other written agreement, order or permit with or from the Department, unless such right is expressly waived or limited therein or pursuant to this Consent Order.

- 20. This Consent Order shall be binding upon the Town and upon its officers, employees, agents, contractors, successors and assigns. Violation of this Consent Order by any of the foregoing persons or entities shall constitute violation of this Consent Order by the Town. The Town shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs. The Town shall provide a copy of this Consent Order to each agent, contractor or employee who is engaged to implement the terms of this Consent Order.
- 21. For purposes of M.G.L. c. 21A § 16 and 310 CMR 5.00, this Consent Order shall serve as a Notice of Noncompliance for the Town's noncompliance with the requirements cited in Part II. above.
- 22. For the violations alleged in Section II. above, the Town was assessed a Civil Administrative Penalty in the amount of Fourteen Thousand Dollars (\$14,000.00). Through the application of the Department's Municipal Policy (Policy On Compliance Incentives For Municipalities), Policy # ENF-97.003, the Department will waive Eleven Thousand Two Hundred Dollars (\$11,200.00) of the civil administrative penalty. The Department will suspend the remaining Two Thousand Eight Hundred Dollars (\$2,800.00) provided that the Town performs the project as described in Attachment A, which is specifically incorporated herein by reference, within one hundred twenty (120) calendar days from the effective date of this Consent Order. The actual cost of the project shall not include personnel costs of the Town employees or officers. The Town will be entitled to credit its actual cost against the amount of the suspended penalty only after submitting copies of vendors' invoices and proof of payment to the Department.
- 23. In addition to the penalty in Paragraph 22. above, the Town shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if the Town violates this Consent Order:

For each day, or portion thereof, of each violation, the Town shall pay stipulated civil administrative penalties to the Commonwealth as follows:

Period of Violation	Penalty per day
1 st through 15 th days	\$ 250 per day
16 th through 30 th days	\$ 500 per day
31 st day and thereafter	\$ 1,000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day the Town corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified the Town of a violation or act of non-compliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within ten (10) days of the date the Department sends the Town a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way the Town's obligation to complete performance as required by this Consent Order.

The Department reserves its right to elect to pursue other remedies and penalties, including administrative, civil and criminal penalties, in accordance with applicable laws if the Town violates any provision of this Consent Order. In the event the Department elects to pursue such other remedies or penalties, the Town shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order.

24. The Town shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order payable to the Commonwealth of Massachusetts. The Town shall clearly print on the face of its payment the Town's full name, the file number appearing on the first page of this Consent Order, and the Town's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3584
Boston, Massachusetts 02241-3584

The Town shall mail a copy of the payment to:

Maria L'Annunziata, Section Chief Department of Environmental Protection Central Regional Office 627 Main Street Worcester, Massachusetts 01608

In the event the Town fails to pay in full, any civil administrative penalty on or before the date due under this Consent Order, and in the manner and form required by, and the date due by, this Consent Order, the Town shall pay to the Commonwealth three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, §6C. The Town shall not be deemed to have returned to compliance until the Town pays all penalties due under this Consent Order and takes all actions required by this Consent Order.

25. The Town agrees to provide the Department, and the Department's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provisions of this Consent Order, the Department retains all of its access authorities and rights under applicable state and federal law.

- 26. The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the parties that they represent.
- 27. This Consent Order shall become effective on the date that it is executed on behalf of the Department.

TOWN OF ACTON

By:	Date:
Don P. Johnson	
Town Manager	
[Address]	-
[Telephone]	_ -
Federal Employer Identification No	
DEPARTMENT OF ENVIRONMENTAL	PROTECTION
Ву:	Date:
Martin Suuberg, Regional Director	-
Central Regional Office	
627 Main Street	
Worcester, Massachusetts 01608	
Telephone: (508) 792-7650	

MS/ML'A/CMC/jc

ATTACHMENT A

The Town has developed and will publish and disseminate the "Resident's Guide to Hazardous Waste Disposal" (The Resident's Guide"). The Town will establish a priority for the mailing to residents closest to environmentally sensitive areas and business centers in the Town. The Resident's Guide will also be distributed at the Town's Hazardous Waste Day to approximately 500 residents per year. It will be posted on the Town's website and advertised through the local media outlets.